

Deposition Designations for:

MARK PETERSON
June 9, 2009

Deposition Designation Key

CI = Certain insurers (green)

**CNA = Continental Cas. Co &
Continental Ins. Co. (red)**

PP's = Plan Proponents (blue)

Obj: = Objection

Ctr = Counter Designation

R = Relevance

BE = Best Evidence

F = Foundation

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

X

In Re:

Chapter 11
Case No.

01-01139 JKF

W.R. Grace & Co., et al.,

(Jointly
Debtors. Administered)

X

— — —
June 9, 2009

— — —

DEPOSITION of MARK PETERSON,

held at the Four Seasons Hotel
Westlake Village, Two Dole Drive,
Westlake, California, commencing at
approximately 7:15 A.M., on the above
date, before Lisa Lynch, a Registered
Merit Reporter, New Jersey Certified
Court Reporter, License No. XI00825,
and Certified Realtime Reporter

— — —

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& Continental Ins. Co. (red)

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4 (Pages 10 to 13)

Page 10	Page 12
1 documents as exhibits to the 2 deposition.	1 morning in connection with 2 confirmation of the plan that's been 3 proposed by W.R. Grace and other 4 proponents --
5 I have additional copies 6 of the documents that I handed 7 out here for people in the 8 room, although I don't know if 9 I have a copy for everyone.	5 A. Yes. 6 Q. -- in this Chapter 11 7 case?
8 MR. COHN: All right, 9 let's get started. Let's mark 10 this Exhibit 1.	8 A. Excuse me. Yes. 9 MR. COHN: Let me -- I 10 need to go off the record 11 again.
12 (Notice of Deposition of 13 Mark A. Peterson marked for 14 identification as Peterson 15 Exhibit 1.)	12 (Off the record.) 13 MR. COHN: Let's mark 14 this Exhibit 2, please.
16 (Errata sheet for trust 17 report marked for 18 identification as Peterson 19 Exhibit 2A.)	15 (Preliminary Expert 16 Report on W.R. Grace trust, 17 Mark A. Peterson, March 2009 18 marked for identification as 19 Peterson Exhibit 2.)
20 (Revised trust 21 report marked for 22 identification as Peterson 23 Exhibit 2B.)	20 Q. Dr. Peterson, I hand you 21 a document that has been marked as 22 Exhibit 2 and ask whether you can 23 identify it.
24 (Errata sheet for the estimation report marked for	24 A. Yes, I can. But
Page 11	Page 13
1 identification as Peterson 2 Exhibit 2C.)	1 actually -- pause a minute. Yes.
3 (Full revised estimation 4 report marked for 5 identification as Peterson 6 Exhibit 2D.)	2 Q. What is it? 3 A. It's a copy of my 4 preliminary expert report on the W.R. 5 Grace trust that I prepared in March 6 2009. Attached to it is a copy of my 7 June 2007 expert report for 8 projecting liabilities for tort 9 liabilities of W.R. Grace as of April 10 2001. That was revised and dated 11 January 2009. It has some but not 12 all of the corrections that were 13 passed to you earlier today and both 14 of these have been marginally changed 15 by the errata that we distributed.
7 EXAMINATION BY 8 MR. COHN:	16 Q. Let's get to the errata 17 in a moment.
9 Q. Good morning, Dr. 10 Peterson.	18 Can we agree -- do you need 19 another moment with the exhibit?
11 A. Good morning.	20 A. It has my resume 21 attached too. There may be other 22 exhibits but that's -- I think that's 23 what it is in its entirety.
12 Q. Do you recognize the 13 document that I've placed in front of 14 you marked Exhibit 1?	24 Q. Okay. Now, for ease of
15 A. Yes.	
16 Q. What is it?	
17 MR. SPEIGHTS: Hold it a 18 minute.	
(Off the record.)	
20 A. It's the Notice of 21 Deposition for this deposition 22 directed to me.	
23 Q. And do you understand 24 that you're here testifying this	

Page 194	Page 196
1 report, that the criteria for the 2 trust is tighter than what Grace 3 historically paid. Is that a fair 4 statement?	1 provide specifications of those kinds 2 of things and other matters.
5 A. I believe that's true, 6 yes.	3 Q. And that will be 4 something created by the trustees 5 after the trust comes into existence; 6 is that correct?
7 Q. And that's what I'm 8 trying to get at. There's a term in 9 here -- I happen to have it because I 10 was studying for Mr. Inselbuch's 11 deposition -- but there's a term in 12 here about credible exposure. Do you 13 recall that term?	7 A. Yes.
14 A. I believe -- 15 MR. FINCH: Term in the 16 TDP?	8 MR. SPEIGHTS: I'm 9 hungry.
17 MR. SPEIGHTS: In the 18 TDP.	10 MR. FINCH: Let's take a 11 break. We're going to take a 12 lunch break now for 45 13 minutes.
19 MR. FINCH: Okay. 20 A. I don't recall that 21 specific language but it sounds 22 reasonable that that's in there.	14 MR. SPEIGHTS: That's 15 good. 16 MR. FINCH: It's 2:19 17 Eastern time. I don't know 18 what time it is in California, 19 but we'll come back a little 20 after 3:00 Eastern time.
21 Q. But I'm looking for that 22 particular term, but it's something 23 24	21 THE WITNESS: Almost 22 11:20. 23 (Luncheon recess taken.)
24 BY MR. SPEIGHTS:	Page 197
1 to that particular effect and, yet, I 2 don't understand what that means. Is 3 this something that the trustees will 4 later have to decide what the 5 credible -- what a credible exposure 6 is?	1 Q. Dr. Peterson, during 2 your examination by Mr. Cohn you 3 mentioned that you had some 4 involvement with the TDP and Grace. 5 Who did you work with on the TDP?
7 A. Yes.	6 A. Various lawyers at 7 Caplin & Drysdale.
8 Q. And when they decide 9 that, if they operate typically as 10 other trusts operate with TDPs, will 11 they set that forth in some document 12 or some guidelines?	8 Q. Were you involved in the 9 TDP for Mogul?
13 A. Likely so, yes.	10 A. Yes.
14 Q. So that in Manville in 15 which you're a trustee, somewhere 16 there Mr. Austern has some guidelines 17 he can go to and say is this a 18 credible exposure justifying 19 payment?	11 Q. Suppose a person was 12 exposed to asbestos as an applicator 13 of Monokote manufactured by W.R. 14 Grace and Limpet manufactured by 15 Turner & Newall, later bought by 16 Mogul, and those were the only known 17 exposures.
20 A. There are instructions 21 that are given to the claims 22 personnel who process claims. 23 There's rules that are incorporated 24 in computer programs and those	18 Would there be any distinction 19 in the payments received from either 20 one of those bankruptcies because -- 21 or bankruptcy trust because Limpet is 22 a chrysotile product and Monokote is a 23 chrysotile product?
	24 MR. FINCH: Object to

PP's
Obj:
RPP's
Obj:
R

<p style="text-align: right;">Page 214</p> <p>1 have in your mind? 2 A. Just three or four. 3 Q. Who were the 4 participants? 5 A. There was general 6 counsel of Grace. 7 Q. Mr. Shelnitz? 8 A. Yes. Mr. Bernick. I 9 think there was someone there from 10 Grace. At one point I think the CEO 11 or one of the principals attended a 12 meeting. There were other attorneys 13 from Kirkland & Ellis. There was 14 several attorneys representing the 15 SCB -- I mean the ACC. There were 16 the attorneys for the FCR. There 17 were -- Tom Florence and Amy Brockman 18 from ARPC were there as experts for 19 the debtor. Jenni Biggs, B-i-g-g-s, 20 from Tillinghast and some of her 21 partners were there for future 22 representative and I was there for 23 claimants.</p> <p>24 Q. What attorneys</p>	<p style="text-align: right;">Page 216</p> <p>1 road they were going down wasn't 2 going right. I don't necessarily 3 believe there was a meeting of the 4 mind. I don't think there was an 5 actual settlement at that meeting. 6 It's when Mr. Inselbuch started 7 explaining the quantitative analyses 8 that everyone threw up their hands. 9 10 MR. SPEIGHTS: Thank 11 you, Dr. Peterson. 12 THE WITNESS: Thank you. 13 MR. FINCH: Does anybody 14 else in the room have any 15 questions for Dr. Peterson? 16 Okay. 17 Does anyone on the 18 telephone have questions for 19 Dr. Peterson? If you could 20 announce who you are and who 21 you represent before you start 22 questioning and that will help 23 the court reporter. 24 MR. BROWN: Nathan, this is Mike Brown. I represent</p>
<p style="text-align: right;">Page 215</p> <p>1 representing the ACC were there? 2 A. Inselbuch was there. I 3 don't remember whether or not Finch 4 was there. I don't remember who else 5 was there.</p> <p>6 Q. Were any of the asbestos 7 PI lawyers there? 8 A. I think at some of the 9 meetings some were. I don't recall 10 who. Probably Rice but I can't say 11 for sure.</p> <p>12 Q. Was anybody representing 13 equity at any of those meetings? 14 A. Yes, I believe there was 15 a representative of equity but I'm 16 not certain of whom. Mr. Inselbuch 17 would have much better knowledge of 18 the participants, and there were 19 certain meetings that I wasn't at.</p> <p>20 Q. Were you at the meeting 21 when the participants had a meeting 22 of the mind? 23 A. I think I was at a 24 meeting when they figured out the</p>	<p style="text-align: right;">Page 217</p> <p>1 Geico, Republic, Seaton and 2 OneBeacon. I have a few 3 questions for Dr. Peterson. 4 5 MR. FINCH: Okay, fire 6 away. 7 MR. BROWN: Actually, 8 could you do me a favor? Could 9 you move, I guess, the 10 microphone a little closer to 11 Dr. Peterson? He was a little 12 bit harder to hear than the 13 questioners. 14 THE WITNESS: I'm just 15 soft spoken. 16 MR. FINCH: Okay. We've 17 switched chairs and Dr. 18 Peterson is as close to the mic 19 as we can get him so go ahead.</p> <p style="text-align: right; color: blue;">PP's Obj: R</p> <p style="text-align: right; color: green;">CJ</p> <div style="background-color: green; border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>EXAMINATION BY MR. BROWN: Q. Good afternoon, Dr. Peterson. I guess it's afternoon in California by now.</p> </div>

Page 226	Page 228
<p>1 opinion in this bankruptcy case with 2 respect to Grace's overall liability 3 for asbestos personal injury claims 4 for purposes of insurance coverage 5 litigation?</p> <p>6 MR. FINCH: Object. 7 Form, lack of foundation.</p> <p>8 MR. DEMMY: Same 9 objection.</p> <p>10 A. Not so far.</p> <p>11 Q. Fair enough.</p> <p>12 And am I correct that so far 13 you have not provided such an 14 opinion?</p> <p>15 MR. FINCH: Objection, 16 form.</p> <p>17 A. Not to my 18 understanding -- but I don't know, 19 again, uses. I've not explicitly 20 done such -- made such an opinion.</p> <p>21 MR. BROWN: I'm sorry. 22 Can the court reporter read 23 back that last comment by Dr. 24 Peterson?</p>	<p>1 liability for indirect PI trust 2 claims?</p> <p>3 A. Not as a separate 4 matter, no.</p> <p>5 Q. I think you said 6 earlier, but correct me if I'm wrong, 7 that the Grace trust will be 8 insolvent. Do I have that correct?</p> <p>9 MR. FINCH: Object to 10 form.</p> <p>11 A. I don't think I said 12 that explicitly. I think I said it 13 would be impaired.</p> <p>14 Q. Okay. Well, let me ask 15 it then. Do you have an opinion on 16 whether the Grace trust, asbestos PI 17 trust, is insolvent?</p> <p>18 MR. FINCH: Object to 19 form, lack of foundation.</p> <p>20 A. Its liabilities will be 21 far in excess of its assets.</p> <p>22 Q. Okay. I know someone 23 asked you a question very similar to 24 this; I'm not sure I heard the</p>
<p>1 (The reporter reads the 2 requested portion.)</p> <p>3 MR. BROWN: Okay, all 4 right.</p> <p>5 Q. Dr. Peterson, am I 6 correct that the ACC has not retained 7 you to provide an opinion regarding 8 the asbestos PI trust's liability for 9 indemnified insurer TDP claims?</p> <p>10 A. That's a safe 11 assumption, yes. Not -- again, not 12 until -- not so far.</p> <p>13 Q. Okay. And would your 14 answer be the same with respect to 15 insurance-related TDP claims?</p> <p>16 MR. FINCH: Object to 17 form.</p> <p>18 A. I don't even know what 19 that is so I've not been asked to 20 do -- to provide any opinions about 21 that so far.</p> <p>22 Q. Okay. Have you been 23 asked to provide any opinions 24 regarding the asbestos PI trust's</p>	<p>1 answer.</p> <p>2 What role did you play in 3 developing the TDP disease values in 4 this case?</p> <p>5 MR. FINCH: Objection, 6 asked and answered. You can 7 answer it again.</p> <p>8 A. I did analyses of what 9 the historic settlements were and 10 what I believe the current values of 11 the various kinds of disease claims 12 were against the trust. I made 13 alternative recommendations of 14 possible TDP values derived from 15 those analyses and probably discussed 16 that with members of the committee as 17 well as committee professionals.</p> <p>18 Q. Is that pretty typical 19 of the role that you played in 20 connection with your retention in 21 other asbestos bankruptcy cases?</p> <p>22 A. It's typical of one role 23 I play, yes.</p> <p>24 Q. Okay. I'm not sure what</p>
	CI PP's CI Obj: CI R
	CI PP's CI Obj: CI R
	CI PP's CI Obj: CI R

PP's
Obj: R

59 (Pages 230 to 233)

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PP's
Obj: R

1 the exhibit number is because I was a
 2 little bit confused even after Mr.
 3 Speights went through it. You have
 4 an Exhibit 2 in front of you; is that
 5 correct?

6 A. Just a moment. Yes.

7 Q. Is that -- I just
 8 want -- is that the big, thick
 9 packet? I mean, it's about
 10 three-quarters of an inch or so
 11 thick?

12 A. Yes. It's the thickest
 13 of the exhibits.

14 Q. Okay. Is there a CV in
 15 there?

16 A. Yes.

17 Q. Can you turn to the
 18 CV?

19 A. Yes, it's Exhibit 1
 20 which follows the -- what we've
 21 called the trust report and precedes
 22 the estimation report and I have
 23 that.

24 Q. Okay. Can you turn

1 CI PP's
Obj: R Page 231
to -- well, let's see. Starting at
 2 the bottom of page three but carrying
 3 over to page four, the last bullet
 4 point on page three is "Expert to 20
 5 Asbestos trusts Regarding Claims,
 6 Procedures and Liability Estimation".

7 A. I see that.

8 Q. And on page four the
 9 last one looked to there is the API
 10 trust?

11 A. Yes.

12 Q. And you were an expert
 13 for the representative of future
 14 claimants, otherwise known as the FCR
 15 is what we typically call them?

16 A. Yes.

17 Q. And that gentleman's
 18 name was Thomas Carey; is that
 19 correct?

20 A. Still is.

21 Q. Still is, okay. What
 22 role are you playing for the API
 23 trust for the moment?

24 MR. FINCH: Objection.

1 CI
2 What's the relevance of this to
 3 the Grace bankruptcy
 4 confirmation hearings, Mr.
 5 Brown?

6 MR. BROWN: Well, it's
 7 part of the CV. That would be
 8 maybe part of it.

9 A. I am providing
 10 consultation and expert judgments and
 11 liabilities estimates and helping
 12 calculating payment percentages for
 13 Mr. Brownson, the trustee, as well as
 14 consulting with the FCR and the
 15 one-person TAC so I talk with all
 16 three parties. Formally my retention
 17 is by the trust.

18 Q. Who is the TAC -- who is
 19 the one-person TAC?

20 A. Well, it's Mike Polk of
 21 Sieben Polk.

22 Q. Okay.

23 A. It may be Sieben Polk as
 24 a whole, but Mike Polk tends to be
 the one that's involved with it.

1 CI PP's
Obj: R Page 232
Q. Okay. I think Ed
 2 Longosz has a document that I'd like
 3 you to take a look at if, you would,
 4 and it's the -- it's the one marked
 5 13.

6 MR. BROWN: Could you
 7 hand him a copy of that? Ed,
 8 did you have a chance to make
 9 copies for everyone?

10 MR. LONGOSZ: I did.
 11 This is a new role for me. I'm
 12 discharging my duties and
 13 obligations.

14 THE WITNESS: Very
 15 well.

16 MR. LONGOSZ: Thank you.

17 Q. Dr. Peterson, you can
 18 take a moment to review -- well, let
 19 me actually make a couple of comments
 20 about it first.

21 The document that you have
 22 should be a two-page document. It
 23 has a deposition exhibit number on it
 24 which says 13 Polk in the lower

PP's Obj:R

60 (Pages 234 to 237)

CI

Page 234

1 right-hand corner. It has two
 2 numbers below that as well, ACC 2352,
 3 and then below that A204.

4 I will represent to you that
 5 the exhibit label is an exhibit label
 6 from the deposition of Mr. Polk in
 7 the API case, the ACC number is the
 8 Bates number from the ACC in that
 9 case and the A204 is the number from
 10 the appendix that accompanied the a
 11 cert appeal in that case.

12 But other than those markings,
 13 which there's some similar markings
 14 on the second page, could you
 15 identify for me the document I guess
 16 we're going to mark as Exhibit 6?

17 MR. BROWN: Is that what
 18 we're up to?

19 MR. LONGOSZ: You want
 20 this marked 6?

21 MR. BROWN: I want it
 22 marked as Peterson-6.

23 (E-mail Bates stamped
 24 ACC 2352 through 2353 marked

CI

Page 236

1 Q. Okay. And when you say
 2 "these individuals", if you can see
 3 on the top of the first page, it was
 4 indicated as having been sent from
 5 you to a Steven Meyer with copies to
 6 a Michael Meyer, Mike Polk, Mike
 7 Sieben, Thomas Carey and another copy
 8 to you, correct?

9 A. Yes.

10 Q. All right. And you have
 11 no reason to doubt that you sent this
 12 e-mail?

13 A. Well, I just -- I
 14 don't -- I don't recall this document
 15 at all. The subject matter is
 16 familiar to me. I don't recall the
 17 particular language of this but it
 18 very well might have come from me.

19 Q. Mr. Longosz is going to
 20 hand you another document.

21 MR. LONGOSZ: 7?

22 MR. BROWN: We'll mark
 23 this one Peterson-7.

24 (E-mail chain Bates

CI

PP's Obj:R Page 235

1 for identification as Peterson
 2 Exhibit 6.)

3 A. Is there a particular
 4 part of this document you want me to
 5 look at?

6 Q. You can read the whole
 7 thing. The only question I have for
 8 you is: Would you identify it for
 9 me?

10 A. Let me look at it.

11 (The witness reviews the
 12 document.)

13 A. All right, I've read
 14 this. Your question is?

15 MR. FINCH: What was the
 16 question?

17 Q. Can you identify it for
 18 me?

19 A. I don't recall this
 20 document, but it purports to come
 21 from me in a time frame when I was
 22 working with these individuals and I
 23 have no reason to think it isn't
 24 something I authored.

CI

Page 237

1 stamped ACC 2483 through 2485
 2 marked for identification as
 3 Exhibit 7.)

4 Q. Just so we're looking at
 5 the same thing, Dr. Peterson, the
 6 document you have should be a
 7 three-page document with an exhibit
 8 tab on the front that says 14 Polk.
 9 Do you see that?

10 A. Yes, I see that.

11 Q. Okay. I actually don't
 12 need you to read this entire document
 13 if it will save some time. I can
 14 direct your attention to page two at
 15 the bottom which purports to be an
 16 e-mail sent from you to Thomas Carey
 17 and Steven Meyer, if you could read
 18 that e-mail for me, and then I've got
 19 a question or two.

20 (The witness reviews the
 21 document.)

22 MR. DEMMY: Michael,
 23 this is Jonathan. Could I have
 24 someone from your team PDF to

PP's Obj:R

1 me those e-mails because we
 2 Obviously don't have them here?
 3 I mean, I don't need them this
 4 second.

5 MR. BROWN: Yes, we'll
 6 PDF them to you.

7 MR. DEMMY: Thanks.

8 A. All right, I've read
 9 this.

10 Q. Okay. Can you identify
 11 that e-mail that begins at the bottom
 12 of page two of what we've marked as
 13 Peterson-7?

14 A. Well, again, it purports
 15 to come from me and it has my e-mail
 16 address and it's a subject matter
 17 that I would have -- would have been
 18 likely to discuss with these persons
 19 but I don't recall it.

20 Q. You don't recall it?

21 A. No.

22 Q. Do you have any reason
 23 to doubt that you sent this e-mail?

24 A. Not particularly.

PP's
Obj:R

1 Q. If you look above there,
 2 you'll -- right above what I directed
 3 you to on page two there's a -- well,
 4 let me back up.

5 You would agree with me,
 6 wouldn't you, that what we've marked
 7 as Exhibit 7 is an e-mail chain?

8 A. Yes.

9 Q. Okay. And it begins
 10 with your e-mail that I just referred
 11 you to, correct?

12 A. Yes.

13 Q. And that's the one dated
 14 Friday, August 27, 2004 at 4:43 PM?

15 A. Actually, the --
 16 apparently the Mike Polk e-mail
 17 doesn't have a date but it appears to
 18 follow those. I'm sorry. What was
 19 your observation -- you asked --
 20 you're talking about the time and
 21 date of the --

22 Q. Yes. The first e-mail,
 23 the one which I directed you to, is
 24 dated Friday, August 27th, 2004 at

1 4:43 PM, correct?

2 A. It's the last in the --
 3 on the document, but yes.

4 Q. Okay. And you
 5 understand the one right above that
 6 from Mr. Meyer -- that's Mr. Steven
 7 Meyer -- to be a response to your
 8 e-mail dated August 31st, 2004 at
 9 9:26 AM?

10 A. It appears to be.
 11 That's what it says it is.

12 Q. Okay. And the e-mail
 13 that begins on the first page you
 14 noted earlier doesn't seem to have a
 15 date on it but that appears to be a
 16 comment from Mr. Polk, correct?

17 A. Apparently.

18 Q. And it was directed to
 19 you, among others?

20 A. Yes.

21 Q. And do you recognize
 22 that to be your e-mail address, at
 23 least your e-mail address back in
 24 2004?

PP's
Obj:
R

1 A. It was and is.

2 Q. Okay. all right, you
 3 can put that aside, Dr. Peterson.

4 I just -- I noted earlier from
 5 your earlier testimony, and I want to
 6 make sure I have this correct, that
 7 you have had various involvement, as
 8 I understand it, or engagements in
 9 connection with the asbestos
 10 liabilities of W.R. Grace. And let
 11 me try to summarize them and then you
 12 just tell me whether I have it right.

13 I understood you to testify
 14 earlier that you played some role
 15 back in 1998 and that thereafter you
 16 were involved in the fraudulent
 17 transfer litigation involving Sealed
 18 Air and Fresenius in or around 2002,
 19 that thereafter you were also
 20 involved in the estimation trial and
 21 that you are obviously involved now
 22 in connection with the plan
 23 confirmation proceeding. Is that
 24 correct.

PP's
Obj:
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